

House File 615 - Reprinted

HOUSE FILE 615

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 585)

(SUCCESSOR TO HSB 198)

(As Amended and Passed by the House April 3, 2013)

A BILL FOR

1 An Act relating to the innovation fund investment tax credit
2 by modifying the tax credit and the authority and duties of
3 the Iowa innovation corporation relating to the tax credit,
4 and including effective date and retroactive applicability
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 15.107A, Code 2013, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3. The corporation may establish one or
4 more innovation funds for purposes of stimulating early-stage
5 and seed capital investment in the state. If a fund is
6 established to qualify for innovation fund investment tax
7 credits pursuant to section 15E.52, the corporation shall
8 ensure that the following requirements are met:

9 a. If the corporation seeks to enter into a contract with
10 an entity to provide investment management services to an
11 innovation fund, such an entity shall be chosen according to
12 an open and competitive proposal process. The corporation
13 may contract with a different entity for the provision of
14 investment management services for each innovation fund.

15 b. The compensation package provided to an entity under
16 paragraph "a" shall be at or below the market rate for such
17 services as determined by at least one independent investment
18 management evaluation group.

19 c. Any contract entered into for services pursuant to
20 this subsection shall be made available, upon request, to the
21 authority, the general assembly, the auditor of state, and the
22 governor's office.

23 Sec. 2. Section 15E.52, Code 2013, is amended to read as
24 follows:

25 **15E.52 Innovation fund investment tax credits.**

26 1. For purposes of this section, unless the context
27 otherwise requires:

28 a. "Board" means the same as defined in section 15.102.

29 b. "Innovation fund" means one or more early-stage capital
30 funds certified by the board.

31 c. "Innovative business" means a business applying novel
32 or original methods to the manufacture of a product or the
33 delivery of a service. "Innovative business" includes but is
34 not limited to a business engaged in the industries of advanced
35 manufacturing, biosciences, and information technology.

1 d. "Nonprofit corporation" means a corporation organized
2 under chapter 504 and qualifying under section 501(c)(3) of the
3 Internal Revenue Code as an organization exempt from federal
4 income tax under section 501(a) of the Internal Revenue Code.

5 2. a. A tax credit shall be allowed against the taxes
6 imposed in chapter 422, divisions II, III, and V, and in
7 chapter 432, and against the moneys and credits tax imposed
8 in section 533.329, for a ~~portion of~~ a taxpayer's equity
9 investment in the form of cash in an innovation fund.

10 b. An individual may claim a tax credit under this section
11 of a partnership, limited liability company, S corporation,
12 estate, or trust electing to have income taxed directly to
13 the individual. The amount claimed by the individual shall
14 be based upon the pro rata share of the individual's earnings
15 from the partnership, limited liability company, S corporation,
16 estate, or trust.

17 3. a. ~~The amount of a tax credit allowed under this section~~
18 ~~shall equal twenty percent of the taxpayer's equity investment~~
19 ~~in an innovation fund~~ tax credits issued under this section
20 for a fiscal year shall equal the amount allocated in section
21 15.119, subsection 2, paragraph "e".

22 b. (1) The authority shall issue one or more certificates
23 totaling the amount allowed per fiscal year under paragraph "a"
24 to one or more nonprofit corporations operating an innovation
25 fund.

26 (2) In order to receive a certificate pursuant to this
27 paragraph, a nonprofit corporation shall be functioning as an
28 innovation intermediary that is aligning local technologies,
29 assets, and resources to collaborate on advancing innovation
30 in this state, shall be in compliance with the requirements
31 of section 15.107A, subsection 3, and shall not be controlled
32 by a financial institution as defined in section 422.61 or a
33 credit union as defined in section 533.102. For purposes of
34 this subparagraph (2), "controlled" means the ability, either
35 directly or indirectly through an affiliate of the financial

1 institution or credit union, to direct or cause the direction
2 of the management and policies of the nonprofit corporation,
3 and includes but is not limited to instances in which fifty
4 percent or more of the directors, officers, or members of the
5 nonprofit corporation are also a director, officer, member,
6 owner, employee, or agent of the financial institution, credit
7 union, or of an affiliate of the financial institution or
8 credit union. "Affiliate" includes any entity that owns or
9 holds fifty percent or more of the equity interest or voting
10 power in a financial institution or credit union, or any entity
11 in which fifty percent or more of the entity's equity interest
12 or voting power is owned or held by a financial institution or
13 credit union.

14 (3) (a) If in a fiscal year multiple nonprofit corporations
15 qualify to receive certificates issued pursuant to this
16 paragraph, certificates shall be issued in such a way that each
17 nonprofit corporation operating an innovation fund receives
18 a pro rata share of the total tax credits equal to the same
19 proportion that the outstanding certified binding investment
20 commitments to that nonprofit corporation bears to the total
21 outstanding certified binding investment commitments to all
22 qualified nonprofit corporations being issued a certificate
23 under this paragraph.

24 (b) Upon the request of the authority, a nonprofit
25 corporation operating one or more innovation funds shall
26 certify to the authority the outstanding amount of binding
27 investment commitments it has received to invest in innovation
28 funds it operates.

29 c. Notwithstanding subsection 9, a nonprofit corporation
30 to which a certificate has been issued pursuant to paragraph
31 "b" shall only transfer the amount of tax credits represented
32 on the certificate to taxpayers who make an equity investment
33 in the form of cash in an innovation fund operated by the
34 nonprofit corporation. In transferring such tax credits, the
35 nonprofit corporation shall ensure that the total amount of tax

1 credits transferred by the nonprofit corporation to a taxpayer
2 equals fifty percent of the taxpayer's investment in the
3 innovation fund. Notwithstanding any other provision of law to
4 the contrary, a nonprofit corporation operating an innovation
5 fund shall not be allowed to make an equity investment in such
6 innovation fund.

7 d. A nonprofit corporation to which a certificate has been
8 issued pursuant to paragraph "b" shall ensure that an investor
9 in an innovation fund operated by the nonprofit corporation
10 shall not be permitted to vote for or participate in a decision
11 to invest moneys from the innovation fund in a business in
12 which the investor has a controlling interest.

13 e. A certificate and related tax credit issued pursuant to
14 this section shall be deemed a vested right of the original
15 holder or any transferee thereof, and the state shall not cause
16 either to be redeemed in such a way that amends or rescinds the
17 certificate or that curtails, limits, or withdraws the related
18 tax credit, except as otherwise provided in this section or
19 upon consent of the proper holder. A certificate issued
20 pursuant to this section cannot pledge the credit of the state
21 and any such certificate so pledged to secure the debt of the
22 original holder or a transferee shall not constitute a contract
23 binding the state.

24 4. A taxpayer shall not claim a tax credit under this
25 section if the taxpayer is a venture capital investment fund
26 allocation manager for the Iowa fund of funds created in
27 section 15E.65 or an investor that receives a tax credit for
28 the same investment in a qualifying business as described in
29 section 15E.44 or in a community-based seed capital fund as
30 described in section 15E.45.

31 ~~5. a. The board shall issue certificates under this section~~
32 ~~which may be redeemed for tax credits. The board shall issue~~
33 ~~such certificates so that not more than the amount allocated~~
34 ~~for such tax credits under section 15.119, subsection 2, may be~~
35 ~~claimed. The certificates shall not be transferable.~~

1 ~~b-~~ The board shall, in cooperation with the department of
2 revenue, establish criteria and procedures for the allocation
3 and issuance of tax credits by means of certificates issued
4 by the board. The criteria shall include the contingencies
5 that must be met for a certificate to be redeemable in order
6 to receive a tax credit. The procedures established by the
7 board, in cooperation with the department of revenue, shall
8 relate to the procedures for the issuance and transfer of
9 the certificates and for the redemption of a certificate and
10 related tax credit.

11 6. The department of revenue in conjunction with the
12 authority shall by February 15 of each year issue an annual
13 report to the general assembly containing the name of
14 each person to whom a tax credit certificate was issued or
15 transferred pursuant to this section during the previous
16 calendar year.

17 ~~6. 7. A taxpayer shall not redeem a certificate and related~~
18 ~~tax credit prior to the third tax year following the tax year~~
19 ~~in which the investment is made. Any tax credit in excess of~~
20 ~~the taxpayer's liability for the tax year in which the taxpayer~~
21 ~~claims the credit may be credited to the tax liability for the~~
22 ~~following five years or until depleted, whichever is earlier.~~
23 ~~A tax credit shall not be carried back to a tax year prior to~~
24 ~~the tax year in which the taxpayer claims the tax credit.~~

25 ~~7. 8. a. An A nonprofit corporation establishing an~~
26 ~~innovation fund shall submit an application for certification~~
27 ~~to the board. The board shall may approve the application and~~
28 ~~certify the innovation fund if all of the following criteria~~
29 ~~are met:~~

30 ~~a- (1)~~ The fund is organized for the purposes of making
31 investments in promising early-stage companies which have a
32 principal place of business in the state.

33 ~~b- (2)~~ The fund proposes to make investments in innovative
34 businesses.

35 ~~c- (3)~~ The fund seeks to secure private funding sources for

1 investment in such businesses.

2 (4) The fund proposes to function as an innovation
3 intermediary by aligning local technologies, assets, and
4 resources to collaborate on advancing innovation in this state.

5 (5) The fund proposes to provide multiple rounds of funding
6 and early-stage private sector funding to innovative businesses
7 with a high growth potential, and proposes to focus such
8 funding on innovative businesses that show a clear potential
9 to produce commercially viable products or services within a
10 reasonable period of time.

11 (6) The fund proposes to operate in a manner designed
12 to complement the purposes and further the policy goals of
13 the demonstration fund and the state small business credit
14 initiative demonstration fund administered by the authority
15 pursuant to 261 IAC 105 and 261 IAC 117, respectively.

16 (7) The fund proposes to evaluate all prospective
17 innovative businesses using a rigorous, technology-based
18 approach and proposes to collaborate and coordinate with the
19 authority and other state and local entities in an effort to
20 achieve policy consistency.

21 (8) The fund proposes to collaborate with the regents
22 institutions of this state and to leverage relationships with
23 such institutions in order to commercialize research developed
24 at those institutions.

25 (9) The fund proposes a detailed plan to support the
26 continuum of innovation in this state by addressing the need
27 for early-stage venture capital investments.

28 (10) The fund meets any other criteria adopted by the
29 authority by rule.

30 b. The board shall certify funds in such a way that not more
31 than three funds are certified as innovation funds at any one
32 time. In determining whether to certify a fund the board shall
33 consider the following:

34 (1) The total available pool of innovation fund investment
35 tax credits.

1 (2) The size of the prospective fund as compared to other
2 existing or prospective innovation funds.

3 (3) The impact that certification of the fund would have on
4 the available pool of investment capital for other existing or
5 prospective innovation funds.

6 (4) Whether certifying the fund as an innovation fund would
7 further the economic goals of the state.

8 9. Tax credit certificates issued pursuant to this section
9 may be transferred, in whole or in part, to any person. A
10 tax credit certificate shall only be transferred twice. For
11 purposes of this subsection, the two transfers shall include
12 the first transfer from the corporation to an investor and one
13 subsequent transfer from the investor to another transferee.
14 Within ninety days of transfer, the transferee shall submit the
15 transferred tax credit certificate to the department of revenue
16 along with a statement containing the transferee's name, tax
17 identification number, and address, the denomination that each
18 replacement tax credit certificate is to carry, and any other
19 information required by the department of revenue.

20 10. Within thirty days of receiving the transferred
21 tax credit certificate and the transferee's statement, the
22 department of revenue shall issue one or more replacement
23 tax credit certificates to the transferee. Each replacement
24 tax credit certificate must contain the information required
25 for the original tax credit certificate. A replacement tax
26 credit certificate may designate a different tax than the
27 tax designated on the original tax credit certificate. A
28 tax credit shall not be claimed by a transferee under this
29 section until a replacement tax credit certificate identifying
30 the transferee as the proper holder has been issued. The
31 department of revenue shall conspicuously label on the face of
32 the certificate any tax credit certificate that is ineligible
33 for transfer.

34 11. The transferee may use the amount of the tax credit
35 transferred against the taxes imposed in chapter 422, divisions

1 II, III, and V, and in chapter 432, and against the moneys and
2 credits tax imposed in section 533.329, for any tax year the
3 original transferor could have claimed the tax credit. Any
4 consideration received for the transfer of the tax credit shall
5 not be included as income under chapter 422, divisions II, III,
6 and V. Any consideration paid for the transfer of the tax
7 credit shall not be deducted from income under chapter 422,
8 divisions II, III, and V.

9 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
10 immediate importance, takes effect upon enactment.

11 Sec. 4. RETROACTIVE APPLICABILITY. This Act applies
12 retroactively to January 1, 2013, for tax years beginning on
13 or after that date and for equity investments in an innovation
14 fund made on or after that date.